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Letter dated 27 January 1997 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General

I have the honour to draw your attention to the report entitled "United Nations Supervision of Human Rights" by the Netherlands Advisory Committee on Human Rights and Foreign Policy (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under the item entitled "Human rights questions: human rights situations and reports of special rapporteurs and special representatives".

(Signed) N. H. BIEGMAN
Ambassador
Permanent Representative

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ANNEX

United Nations Supervision of Human Rights, prepared by the Advisory Committee on Human Rights and Foreign Policy of of the Ministry of Foreign Affairs of the Netherlands

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# UN Supervision of Human Rights

## Introduction and task outline

In his letter of 6 September 1995 the Minister for Foreign Affairs asked the Advisory Committee on Human Rights and Foreign Policy (see annex I for list of members) to advise him on the role of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereafter referred to as the Sub-Commission) in terms of its relation to the United Nations (UN) Commission on Human Rights, as well as on ways of rationalising and harmonising reporting procedures within the framework of monitoring compliance with obligations laid down under various human rights treaties. The Advisory Committee was requested to look at these aspects against the general theme of the UN human rights system and implementation at international level (see annex II for request for advice).

In its advisory report no. 20 of 19 February 1996 (see annex III for full list of published reports), the Advisory Committee focused on the first component of the request for advice, and formulated recommendations and suggestions on the role of the Sub-Commission. In doing so the Advisory Committee looked at various aspects in depth, including the desirability of bolstering the independence of the members of the Sub-Commission, which should be composed of independent experts. The comments and recommendations made by the Advisory Committee on this topic apply, in its opinion, even more strongly to the members of the bodies that supervise compliance with treaties. The character of these treaty bodies is not so much political as semi-judicial, and for this very reason they must be in a position to supervise compliance with the human rights treaties under whose provisions they were established. The Advisory Committee is referring in this context to:

- The Human Rights Committee (HRC);
- the Committee for the Elimination of Racial Discrimination (CERD);
- the Committee for the Elimination of Discrimination against Women (CEDAW);
- the Committee against Torture (CAT);
- the Committee on the Rights of the Child (CRC).

The Advisory Committee also took into consideration the Committee on Economic, Social and Cultural Rights (CESCR), established by a resolution of the UN's Economic and Social Council (ECOSOC).

The Advisory Committee will not go into this aspect again, important though it is. Instead it would refer to its comments on this subject in its advisory report no. 20.

In the present advisory report, the Advisory Committee will concentrate on the second component of the minister's request for advice, namely the functioning of the reporting procedures pursuant to human rights treaties and the problem of rationalization and harmonization.

Chapter 1 looks at the general background. Chapter 2 deals with the developments that have occurred in this field since the publication of the Advisory Committee's advisory report 'Human Rights Conventions under UN Supervision' in 1988. Since the Advisory Committee believes that this question cannot be seen in isolation from the broader problem of monitoring compliance with human rights instruments that has emerged over the years within the UN, it will look at this subject in Chapter 3. In doing so, it will examine reporting procedures in relation to other treaty-based procedures, namely the right of complaint (individual right of complaint and states' right of complaint) and inquiry procedures. In Chapter 4 the Advisory Committee will also look, albeit

more briefly, at the supervisory procedures and mechanisms established by the Human Rights Commission by virtue of powers pursuant to the UN Charter (the so-called 'charter-based procedures and mechanisms'). The Advisory Committee has moreover thought it relevant to consider, in Chapter 5, certain developments relevant to this advisory report that have taken place since the Second World Conference on Human Rights in Vienna (June 1993). In doing so it has focused on the appointment of a High Commissioner for Human Rights (HCHR). Chapter 6, finally, contains a summary and a number of recommendations.

The Advisory Committee is greatly indebted to Prof. P.H. Kooijmans, professor of international law at Leyden University and former UN rapporteur against torture, to Ms I. Boereflijn, an expert in the field of reporting procedures attached to the Netherlands Institute of Human Rights (SIM) of the University of Utrecht, and to officials of the Ministry of Foreign Affairs for their assistance in the preparation of the present advisory report.

## Chapter 1. General background

The UN supervisory procedures have developed quite differently to the supervisory system adopted by the International Labour Organization (ILO) and the system used in the framework of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Generally speaking, the two latter mechanisms consist of a single, consolidated system composed of various bodies, which monitors compliance by states parties with obligations laid down in a series of conventions (ILO) or in the main convention and various subsequent protocols (ECHR). In its infancy the UN sought to set up a similar uniform supervisory system, in the context of establishing an 'International Bill of Rights'. The same notion was also put forward in a proposal made in 1968 at the First World Conference on Human Rights in Teheran -i.e. after the establishment of the Convention on the Elimination of All Forms of Racial Discrimination (1965) and both the major human rights covenants adopted in 1966, along with the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)- but it failed to gain sufficient support.

The path pursued by the UN was a different one: the successive creation of a series of treaties, each with its own supervisory mechanism. As a result, there are at present six separate treaty bodies. After the entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, their ranks will be swelled by a seventh treaty body.[1] Each treaty body is in a sense autonomous, having its own procedural rules and pursuing its own policy. It is against this background that the problems to which the minister refers in his request for advice arise. Solutions need to be found to these problems, which include the burden of reporting obligations and the lack of harmonization between the supervisory bodies.

The total picture of UN supervisory procedures and bodies becomes yet more complex when one takes into account that over the years the Commission on Human Rights has created numerous 'charter-based' organs by virtue of a mandate created in 1967 in ECOSOC resolution 1235 (XLII). The working groups and rapporteurs created on the basis of this mandate focus either on the human rights situation in a specific country or on certain internationally widespread practices that are classed as grave human rights violations. No fewer than twelve country-specific and fourteen thematic reports were presented at the 1996 session of the Commission on Human Rights.

The total picture that emerges is highly complex and does not form a surveyable whole. It reflects interest in and concern about a host of problems, country situations and groups of people. It came into being gradually via political processes, through an 'incremental approach', rather than as the product of a comprehensive master plan. In a sense it reflects a healthy dose of vitality, but at the same time it places heavy demands on the UN secretariat, i.e. the Centre for Human Rights, in terms of harmonization and coordination. The support being provided is proving deficient, notably because of internal differences of opinion and lack of resources, for instance in the field of data processing. One of the tasks of the recently created HCHR is to improve this state of affairs. The Advisory Committee will return to this point later in the advisory report.

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[1] Only seven states are party to this Convention at present; before it can enter into force, twenty states must ratify or accede to it (article 87).

## Chapter 2. The 1988 advisory report; subsequent developments and the significance of reporting procedures

The problem of reporting procedures has been a preoccupation for some considerable time now. As far back as 1988, the then Minister for Foreign Affairs asked the Advisory Committee to advise him on this issue. The advisory report 'Human Rights Conventions under UN Supervision' (no. 7 of 12 July 1988) was published by the UN (doc. A/C.3/43/5) at the Minister's request, and played a role in the discussions of the UN General Assembly (UNGA) and the Commission on Human Rights. The advisory report reached the UN during a period in which for the first time efforts were being made to devote structural and permanent attention to a subject that figures annually on the agenda of the UNGA and the Commission on Human Rights under the heading: 'Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights'.

Some of the deficiencies identified at the time remain as much a problem as they ever were, or have even become exacerbated. This particularly applies to the burden of reporting procedures under the various instruments, the backlog in the submission of reports by states parties and the Centre for Human Rights' inability to provide sufficient support capacity. A number of improvements have been made in respect of certain points on which the Advisory Committee advised in 1988, for instance with regard to certain working methods used by treaty bodies, and to the method of funding the meeting costs of the treaty bodies. These developments are largely due to the fact that the treaty bodies' scope has increased as a result of the cessation of political conflict between East and West.

The sketch of the present situation provided below is by no means complete. Instead, the Advisory Committee has attempted to describe major quantitative and qualitative developments since 1988:

(i) Two new conventions have swelled the ranks of treaties with reporting obligations, of which one has entered into force and currently has the most signatories of all human rights instruments, namely the Convention on the Rights of the Child (1989). The other recent convention, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) has not yet entered into force. A further development is the *de facto* dismantling of the international supervisory mechanism to monitor compliance with the International Convention on the Suppression and Punishment of the Crime of Apartheid.

(ii) Currently under preparation are Optional Protocols to the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights and two Protocols to the Convention on the Rights of the Child.

(iii) The number of ratifications of the various treaties has increased considerably. However, the reporting backlog has grown even more (for details see annex IV).

(iv) The individual right of complaint in respect of HRC, CAT and CERD has been accepted by many more countries (see also annex IV).

(v) With a view to relieving states parties of the burden of providing basic data on country, demography, constitutional structure, etcetera, with every report, a system of *core documents* has been introduced, containing information that can be used by all treaty bodies.

(vi) Attempts are being made to improve working methods and the quality of supervisory procedures by:

- making greater use of various information sources;
- formulating and using 'general comments' and 'general recommendations' on a wider scale;
- formulating 'concluding observations' after dealing with each country report, and incorporating a summary of strong/weak points and recommendations for follow-up;
- appointing country rapporteurs (in the case of some treaty bodies).

(vii) Most treaty bodies now request special reports if the situation with respect to certain states parties gives rise for concern; in some cases this is done with a view to taking special preventive measures (particularly by CERD).

(viii) The meeting costs of CERD and CAT, which were formerly met by the states parties, are presently, in anticipation of the ratification procedure of the amendments to the Conventions, being funded from the UN's regular budget. This has reduced the risk of meetings being cancelled due to lack of funds.

(ix) Since 1988, the chairpersons of the treaty bodies have met once every two years to discuss common problems and recommend improvements to working methods and organizational practices. As of 1996 these meetings will take place annually. As of 1996, meetings will also be organized at which the chairpersons of the treaty bodies, special rapporteurs, representatives, experts and representatives of the support services programme will discuss cooperation and coordination.[2]

(x) A High Commissioner for Human Rights (HCHR) has been appointed. The High Commissioner's mandate includes coordination within the Centre for Human Rights. Since 1995 the HCHR has taken part in the consultations referred to under (ix) above.

(xi) The burden of work for which the Centre for Human Rights is responsible -heavy from the outset- has increased considerably, without being reflected by a proportionate increase in financial resources and staffing.

Taking into account the above developments, the Advisory Committee notes that, given the quantity and volume of reports that states parties are obliged to submit, and the desirability of improving the quality of supervisory procedures, it is the reporting procedures that are under greatest pressure within the monitoring system as a whole. The question accordingly arises as to whether the sheer weight of reporting obligations is not causing these procedures to take on a perfunctory and ritual character, and whether there is point in the states parties, the treaty bodies and the UN investing so much time, energy and resources in them.

It is in the light of these considerations that the Advisory Committee, as it did, incidentally, in its 1988 advisory report, wishes to emphasize the special character of the reporting procedure, in the sense of an obligation that applies to all states parties (independent of political selectiveness) and that concerns the implementation of the treaties as a whole.

In this light, therefore, the Advisory Committee feels it worthwhile to recall the objectives that the reporting system is intended to serve. It would refer in this context to the contribution 'The

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[2] See UN Documents HRI/MC/1996/2 and E/CN.4/1996/103.

Purposes of Reporting' by the present chairman of the CESCR, Philip Alston, in the 'Manual on Human Rights Reporting' (New York, 1991, pp. 13-16). In this contribution the author distinguishes seven related functions that must be reflected in reports. These are:

(i) Initial review, i.e. an initial survey of national legislation and practice.

(ii) Monitoring, i.e. carefully following and charting relevant developments, both at national level and on the level of the treaty bodies.

(ii) Policy formulation, i.e. formulating policy measures necessary to implement treaty obligations.

(iv) Public scrutiny, i.e. accountability on the part of states towards their own citizens, interested national Non-Governmental Organizations (NGOs) and the international society, represented by the treaty bodies.

(v) Evaluation, i.e. the assessment of developments in the light of previous reports and of objectives that have been achieved, or have yet to be achieved.

(vi) Acknowledging problems, i.e. the acknowledgment of deficiencies and problems that require improvement; their identification is a task that needs to be carried out both at national and international level.

(vii) Information exchange, i.e. the compilation and exchange of data to enable states parties, NGOs and treaty bodies to take part in a learning process.

In the light of the above functions, the effectiveness of the reporting system is entirely dependent on fruitful interaction between the national and international levels. The national component is at least as important as the international component, if not more so. If international supervision is superficial and insufficient, there will be no political stimulus at national level to invest much time and energy in the preparation of reports. Conversely, if the reports at national level are the result of a perfunctory, bureaucratic exercise, the conditions will scarcely be created for a constructive dialogue in the international field. In this context, the Advisory Committee would stress that it regards the UN supervisory mechanisms as a crucial, vital and dynamic component of the system for the global protection of human rights, and that in its opinion the potential inherent to this system has by no means been exhausted. When looking at reporting procedures and making recommendations and suggestions, the Advisory Committee has sought to establish ways in which the functioning of the reporting system can be improved, not only in general terms, but also with respect to the Netherlands and the contribution it can make in this context.

## Chapter 3. Treaty-based procedures

With regard to the various treaty-based procedures, a rough distinction can be made between reporting procedures, complaint procedures (individual complaints and complaints by states) and inquiry procedures. The Advisory Committee will deal with these three types of procedures in turn, but will focus on reporting procedures, given the request made by the Minister for Foreign Affairs.

### 3.a Reporting procedures

The reporting system is the most used of the various treaty-based procedures. All states parties are obliged to account periodically for the manner in which they implement treaty provisions, by submitting reports. The functions that the reporting system can fulfil have already been outlined above. The Advisory Committee will focus its comments and suggestions in this section on the following two components of reporting procedures: the international component of the reporting system (taking into account the problems of backlogs and the burden of reporting obligations) and the national component of reporting procedures (including the situation of the Netherlands).

*International component*

A brief look has already been taken above at qualitative and quantitative developments in the international field since 1988. The Advisory Committee will look below at a number of aspects relating to the improvement of working methods and enhancement of the quality of supervisory procedures. In doing so it will consider attempts to tackle the huge backlogs in submitting and considering reports, the country rapporteurs system, on-the-spot inquiries, certain general suggestions for the improvement of the supervisory system, the need for a more uniform policy and the role of the HCHR and the Centre for Human Rights.

The huge backlogs in the submission and consideration of reports are a thorny problem for which there are no simple solutions. In fact it is a problem which is increasing in size and complexity as the treaties that require reports from states parties increase in number (see also annex IV). The Advisory Committee incidentally wishes to emphasize that states parties that do not comply with reporting obligations or that submit reports only after great delays are violating the relevant treaties. They are undermining a meaningful system of international supervision. The causes of the backlogs vary: lack of expertise or understaffed national administrative bodies, lack of public or parliamentary interest in reporting obligations, low political priority, bureaucratic sluggishness and internal reluctance to submit to international supervision. Neither the treaty bodies, the UNGA nor the Commission on Human Rights have yet succeeded in coming up with genuine solutions. The issue of reminders to delinquent reporting governments, the naming of these countries in reports and policy documents and the practice of speaking to representatives of the relevant states have become too much of a routine. To date, the provision of advisory services through the organization of training sessions on reporting and more direct assistance to certain states parties have not produced much by way of concrete results.

Aside from the above, the treaty bodies, too, must take steps to guarantee thorough and punctual consideration of reports. In general, the Advisory Committee favours stricter discipline on the part of the treaty bodies, which should stick more rigidly to their supervision timetables, rather than stretching schedules to accommodate states parties unable to submit reports on time. Certain treaty bodies are known to have already taken steps to this end. In this context the Advisory Committee was interested to learn of the method used by the CESCR and, under certain circumstances, by CERD, to deal with seriously delinquent countries: dates for consideration are set even if no report has been provided, and supervision is based on information sources other than the reports provided by the country in question. On this point the CESCR has in principle decided to consider

one relevant country situation during each session. The Advisory Committee believes that treaty bodies should consider going a step further, and in future set their timetables themselves well in advance (for instance a year in advance), irrespective of the availability of reports. These timetables could then be published and made known to the various national institutions and NGOs. Although this method might not always lead to the desired constructive dialogue, in practice it would have a 'big stick' effect on states parties, encouraging them to submit overdue reports within a relatively short-term period. A more ordered and manageable working method would also prevent reports that are submitted on time from lying around so long before being processed that the information contained in them is obsolete by the time they come up for consideration. The Advisory Committee is aware that various treaty bodies intend to speed up the consideration of reports that have been submitted but have not yet been dealt with. It regards it as crucial that measures are taken to rectify this problem, which is widespread except in the case of CERD and CAT.[3] In an attempt to solve this issue, the CRC opted to increase the number of Committee members from 12 to 18. However, if discussions of the reports continue to take place on a plenary basis, a situation may arise in which it is harder, rather than easier to reach consensus on conclusions. Whether this choice will have the effect of preventing further backlogs in the consideration of reports is something that has yet to be established. In the short term, the Advisory Committee sees greater potential in a 'catching up manoeuvre', though treaty bodies would need to be enabled to hold a number of extra sessions. The Advisory Committee accordingly urges the Netherlands Government, where possible together with like-minded partners, to make efforts to ensure that the treaty bodies are allocated the necessary extra funds and facilities to this end.

The Advisory Committee notes with approval that most treaty bodies have appointed country rapporteurs or working groups charged with preparing and introducing country reports, as it suggested in its 1988 advisory report. In order to raise the quality of the dialogue between government representatives and treaty bodies, the Advisory Committee believes that all treaty bodies should adopt a system whereby country reports are dealt with in three stages: an initial round in which the most important issues were dealt with, followed after a 24-hour or 48-hour period in which the state party would have the opportunity to reflect and hold internal consultations, by a second round to continue and complete the dialogue. Finally, in a third stage, at which the state party would not be present, the treaty body would finalize its concluding observations. The Advisory Committee also urges general adoption of the formal practice (CESCR, CRC) and informal practice (HRC, CERD) of preceding examination of country reports with sessions attended by NGOs in order that they may share their expertise with country rapporteurs and other members of treaty bodies. Although most treaties do not provide for consultation involving national and international NGOs, the Advisory Committee sees no objections to establishing such a system, especially if it were to be on an informal basis for the present. The Advisory Committee notes with approval the adoption of the proposal made at the sixth meeting of chairpersons of treaty bodies to involve national and international NGOs more actively in the exchange of information preceding Committee meetings.

The Advisory Committee notes that, contrary to the practice adopted by working groups and rapporteurs of the Commission on Human Rights (see p. 15), most human rights conventions, with the exception of the Convention against Torture (see pp. 13/14 ), do not provide for inquiries on the territory of states in which violations are alleged to have taken place (hereafter 'on-the-spot inquiries'). This has not prevented some treaty bodies, such as CESCR and CERD, from initiating such on-the-spot inquiries in exceptional cases and, where the relevant state party has granted permission, from visiting the territory of that state party. In general, visits by representatives of

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[3] On 1 May 1996 CEDAW, for instance, still had 44 outstanding reports to deal with, and HRC a total of 22 reports.

treaty bodies to the territories of states parties can have a significant preventive effect. The Advisory Committee favours the continuation and expansion or creation of such options, at the same time it is aware that on-the-spot inquiries can only take place in special cases, due to budgetary restrictions.

The Advisory Committee has taken note of various more general suggestions to solve the problems that have arisen. It feels that serious consideration should be given to assessing the feasibility of suggestions made inter alia in UNGA resolution 50/170, para. 7. The aim of the suggestions in question is, without jeopardising the quality of the reports, to rationalize them through (a) cross-referencing between reports, (b) structural coordination facilities within national government services, (c) improvement of coordination between individual treaty bodies, and between treaty bodies as a whole and the ILO, and (d) the possibility of introducing a single, comprehensive report per country instead of publishing a series of thematic reports pursuant to individual conventions. Whereas the Advisory Committee feels that the suggestion under (d) is rather complex and far-reaching from the point of view of the various treaty mechanisms and objectives, and could therefore only provide a solution in the long term, it would be fairly straightforward, certainly within the Dutch context, to adopt suggestions (a) and (b), and the Netherlands Government, where possible with like-minded partners, could urge adoption of suggestion (c).

The Advisory Committee has also considered the notion of releasing countries that have endorsed the optional individual right of complaint within the framework of a treaty from reporting obligations, or of making such obligations less onerous. The thinking behind this is that problems relating to the implementation of a convention can also be brought to the notice of the supervisory committee via the individual right of complaint; that this would help to reduce the number of reports and thus encourage states to endorse the individual right of complaint. Although it does see certain advantages to this approach, it nevertheless believes that the reporting system and the right of complaint should not be regarded as alternative but rather as complementary methods. In this context the Advisory Committee would recall to mind the different functions that a reporting system can fulfil and that differ materially from the functions of a system of complaint.

In his request for advice of 6 September 1995, the Minister for Foreign Affairs also raised the issue of how the various supervisory organs can maintain a uniform policy in terms both of working methods and uniform and transparent interpretations of human rights standards. The Advisory Committee is aware of this problem, which is incidentally closely connected to the fact that the respective treaty bodies are largely independent and autonomous in the exercise of their supervisory task. They do report to the UNGA, but the latter does not have the competence to instruct the treaty bodies on how they should act, nor to correct them. Legally speaking, the treaty bodies are not subordinate to the UNGA, but organs *sui generis*. Efforts need therefore to be made in the medium term to find other ways and means of improving harmonization between the work of the various treaty bodies. This could be achieved, as stated above, by far-reaching measures such as the creation of a single and uniform supervisory mechanism. The question could also be looked into of whether countries obliged to report under the provisions of various conventions could in future have reports considered 'jointly' by the various treaty bodies at the same time. Finally, an interim solution would be to try to incorporate the reports drawn up pursuant to separate treaties into a comprehensive report - a solution that the Advisory Committee incidentally looked at in its 1988 advisory report and to which cautious reference is made in the Final Declaration and Programme of Action of the Second World Conference on Human Rights in Vienna (para. 87) and in UNGA resolution 50/170.

In the short term, clarification and strengthening of the coordination tasks of the HCHR and the

Centre for Human Rights would provide a feasible solution. A Centre for Human Rights that is alert and functioning properly should be able to identify discrepancies in the work of the treaty bodies. These can then be brought to the notice of the chairpersons of the treaty bodies via the HCHR. With a view to promoting the necessary consistency, the chairpersons of the respective treaty bodies could discuss ways of improving coordination, assuming that the treaty bodies are prepared actively to cooperate in this regard. One option might be to make a fixed agenda point of this problem during the annual chairpersons' sessions. The 'concluding observations' and 'general comments' agreed by the various treaty bodies could serve as a starting point for discussions, providing they were generally available and widely disseminated.

*National component*

The national component of reporting procedures is just as important, if not more important than the international component. The Advisory Committee feels that in general not enough attention is paid to this point. This means, in the Dutch situation, that the Ministry of Foreign Affairs would have to have coordination talks with the other ministries involved and the representatives of the other parts of the Kingdom well in advance of the date on which a report had to be submitted, so as to draw up a timetable for the preparation and submission of the report. Strict compliance with the timetable is crucial. If necessary, this would have to be supervised at ministerial or senior civil service level. The Advisory Committee wonders whether important community-based organizations such as NGOs should be involved in the preparation of country reports, as happens in certain countries. The Advisory Committee is of the opinion that this is in principle an area of government responsibility, and that a clear distinction must be upheld between government responsibilities and those of NGOs. The Advisory Committee therefore believes that when preparing reports, NGOs should in principle only be required to provide information.

However, the Advisory Committee does consider it very important that reports, once they have been prepared and drawn up, can become the subject of national debate in social and academic frameworks within the context of 'public scrutiny'. NGOs can ensure -as the Dutch section of the International Commission of Jurists (NJCM) already does in the Netherlands- that comments are drawn up on the government report and that this commentary (whether as a 'shadow report' or in some other form) is placed at the disposal of the relevant treaty body. This approach has been adopted by the Netherlands and certain other countries, and contributes significantly to broadening and deepening the dialogue between the supervisory body and the state party. However, such a system depends on NGOs and others being given timely information on the agendas of treaty body meetings when considering reports, and also having access to the text of government reports. The Advisory Committee believes that Parliament should also obtain a better insight into the way in which the Netherlands complies with its treaty obligations. The Advisory Committee therefore recommends that the relevant reports are sent to the Upper and Lower Houses of Parliament at the same time they are submitted to the treaty bodies.

In the present situation, the treaty bodies inform the government of the state of their findings. To promote a meaningful follow-up and to foster a continuous process of fulfilling treaty-based obligations, the Advisory Committee recommends that the government, in this case the Netherlands Government, also informs Parliament and interested organizations of the substance of the dialogue between the government representatives and the treaty bodies. The 'concluding observations' of the treaty bodies, which comprise a summary of strong/weak points and of the recommendations for follow-up are an excellent instrument for feedback from the international to the national level. In this context the Advisory Committee expressly endorses a recommendation to this effect by the chairpersons of the treaty bodies, which was subsequently supported by the UNGA in its above-mentioned resolution 50/170 (para. 17). The Government should also submit periodic reports to both the Upper and Lower House on the way in which any

recommendations are being implemented or are to be implemented. With a view to giving the follow-up process a structural basis, the Advisory Committee suggests that the Government might consider setting up a special interministerial working group to this effect.

Finally, the Advisory Committee would stress once again the point concerning active interaction between the national and international components; an interaction in which the government and national NGOs in the Netherlands, as well as in other countries, should play a key role, and in which each have their own area of responsibility.

3.b. Complaint procedures

A distinction should be made between states' complaints procedures and individual complaints procedures. On the question of states' right of complaint within the framework of UN treaty procedures, the Advisory Committee wishes to be brief. Although it is provided for by the Convention on the Elimination of All Forms of Racial Discrimination and -on an optional basis- by the ICCPR and the Convention against Torture, states have never yet availed themselves of this right of complaint. For various reasons, states with grievances relating to human rights violations in other states seem to prefer to air them in UN political fora, such as the Commission on Human Rights, or via other political or diplomatic channels. The Advisory Committee regrets this, but does not expect the situation to change in the near future.

As far as the individual right of complaint is concerned, the Advisory Committee recalls that the Netherlands played an important initiating role in the UN to secure acceptance of this right of complaint -albeit on an optional basis- in the framework of the Convention on the Elimination of All Forms of Racial Discrimination, the ICCPR and the Convention against Torture. Whereas this right of complaint occupies only a modest place in the work done by CERD and CAT, the HRC's experiences with it have been positive, and the case law developed by the latter committee is of great significance to the promotion and protection of human rights. Although the HRC's pronouncements are not legally binding, its judgments are authoritative and they are usually implemented, largely because the HRC has developed a follow-up monitoring system. For this reason, amongst others, the continuing increase in the number of states parties to the First Optional Protocol to the ICCPR is a satisfying development (see annex IV).

The Advisory Committee would recall that in its report on Economic, Social and Cultural Human Rights (advisory report no. 18) it advocated devising both an individual and a collective right of complaint under the International Covenant on Economic, Social and Cultural Rights (CESCR). The Advisory Committee would once again urge that this be done, and would refer to the arguments that it advanced in 1994. Progress at international level is slow, which is why the Advisory Committee recommends once again that current initiatives be given particular encouragement and support. This applies notably to the Convention on the Elimination of All Forms of Discrimination against Women. The Advisory Committee expects that the Government, in line with the tradition established by the Netherlands, will continue to do everything possible to support the proposal currently under consideration by the UN Commission on the Status of Women, and to foster and promote a positive decision.

3c. Inquiry procedures

The Convention against Torture is the only UN human rights convention that expressly provides for an inquiry procedure, in which CAT can take the initiative. This is regulated in article 20 of the Convention, which enables CAT, in the event that it receives reliable information concerning the systematic practice of torture in a state party, to invite the relevant state to provide information and observations and to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. Such an inquiry may include a visit to the territory of the

relevant state party. CAT has used this inquiry procedure at least on two occasions (Turkey and Egypt). The Advisory Committee regards an inquiry procedure of this type as highly important, especially as this procedure -unlike regular reporting procedures and complaints procedures- invests the supervisory committee with the power to initiate inquiries. Although the use of this instrument demands a method different to that used in the treaty bodies' other, more traditional tasks, the Advisory Committee favours the creation of similar inquiry procedures for the other human rights conventions.

The Advisory Committee has already noted above that some treaty bodies have decided to institute a special inquiry in exceptional or urgent circumstances, despite the lack of an express mandate in the relevant conventions, and, with the approval of the state party concerned, have designated one or more of their members to pay a visit to its territory. This development, which is not uncontroversial within the UN, is applauded by the Advisory Committee, not only because a visit to the relevant state provides supervisory organs with better insight, but also because a visit of this kind can have a preventive effect. In this context the Advisory Committee refers to the results - generally regarded as positive- experienced so far in respect of the European Convention for the Prevention of Torture (ECPT), which is specifically geared to an institutional system of visits to prisons, detention centres and other places where people are imprisoned against their will on the territory of states parties. Although the individual characteristics of this European system are such that not all ECPT experiences can be applied without further ado in a UN monitoring system, the Advisory Committee recommends that the Government, where possible in cooperation with other like-minded countries, makes use of this knowledge to promote current efforts to set up a similar system of visits at UN level and anchor it in treaties, and urges it to lend strong support to these efforts.

The various treaty procedures discussed above can be regarded as a framework of interaction between the procedures themselves, and between the national and international levels. Reports and complaints can for instance result in inquiries, and the follow-up of complaint procedures can also become the subject of reports. Thus the various procedures complement one another. If they are to be effective, at least three conditions must be met. The first is the committed cooperation of the states parties which have undertaken certain obligations by virtue of treaties, but which not infrequently renege on their responsibilities. The second condition is expertise, commitment and independence on the part of the members of the treaty bodies. The third condition is a well-equipped, dedicated and expert Centre for Human Rights. The Advisory Committee notes with concern that these three conditions are far from being met. It urges the Government to do everything in its power to help achieve these conditions by setting a good example (e.g. by submitting reports on time), consulting with other countries (e.g. in the framework of the European Union) and influencing decision-making in the UN (budgetary affairs, elections etc.).

## Chapter 4. 'Charter-based' procedures and mechanisms

The Advisory Committee noted earlier that within the complex of supervisory procedures and mechanisms there has been a great increase in rapporteurs and working groups geared to a country situation or specific themes. Currently the lion's share of the 'charter-based' organs, as they are called, is formed by no fewer than twelve country rapporteurs and fourteen thematic rapporteurs or working groups. They were established by resolutions emanating from the Commission on Human Rights and report to the Commission and in some instances also to the UNGA. Their mandate has an ad hoc character. The country rapporteurs are appointed for a year; most thematic rapporteurs or working groups have a three-year mandate. In both cases, mandates can be extended. Whether they are extended will depend on the actual circumstances. The working group on South Africa, for instance, existed for over 25 years, and the working group (later rapporteur) on Chile, established in 1975, functioned for over ten years. It should be noted that rapporteurs on former Yugoslavia and Rwanda were appointed at special sessions of the Commission on Human Rights in 1992 and 1994 respectively, in response to very alarming reports of mass violations of human rights. Unlike treaty-based procedures, which only affect states parties, 'charter-based' procedures and mechanisms extend to all UN member states.

'Charter-based' procedures and mechanisms, by their very nature, have a broader and more flexible mandate than treaty bodies. Rapporteurs and working groups regularly visit countries (subject of course to the approval of the governments concerned); in emergencies they may direct urgent requests to governments, also in respect of individuals; they can make use of all information sources that they consider reliable, particularly NGOs; the findings of their reports serve as a basis for policy-oriented resolutions by the Commission on Human Rights and the UNGA. The charter-based procedures have a more political function than treaty-based procedures. This is, firstly, because they involve independent experts appointed in their personal capacity reporting to political organs and, secondly, because they focus on human rights violations, thus accentuating the political context. The Advisory Committee stresses that charter-based procedures and treaty-based procedures do not make each other redundant; they have a complementary character. The same can be said of the relationship between country procedures and thematic procedures. Thematic procedures have the advantage of being non-selective, because they are not geared to a single country. Conversely, country rapporteurs confront individual governments more forcibly with their accountability, as needs to be done in the case of large-scale and grave violations of human rights.

Despite its concern at the fact that states are not usually very willing to cooperate in respect of visits to their territories, the Advisory Committee emphasizes the great importance of on-the-spot inquiries. It regards them as a significant and effective research method, and believes that they should actively focus on investigation and not become exercises in diplomatic mediation, as is sometimes the case. The Advisory Committee notes with interest that in certain cases (former Yugoslavia, Rwanda, Malawi) such visits by rapporteurs and working groups were augmented by structural facilities in the shape of human rights bureaus and monitors. Providing they are properly equipped, trained and instructed, these facilities can form a worthwhile supplement to methods and techniques for the protection of human rights. The HCHR has rightly taken on a responsibility in this respect, which the Advisory Committee feels deserves the political and material support of the Netherlands Government. In this context the Advisory Committee regards it as an interesting development that in its 1996 session, the Commission on Human Rights requested the HCHR in a statement by the chairperson to establish a permanent office in Colombia at the earliest possible opportunity. The task of the office will be to assist the Colombian authorities in developing policy and programmes for the promotion and protection of human rights, as well as to draw attention to human rights violations in Colombia and submit analytical reports of such violations to the HCHR.

The Colombian government was sufficiently accommodating in this respect to escape being allocated a country rapporteur. The Advisory Committee urges the Government to ensure that the alternative solution that has been adopted will not become too much of a concessional formula, and to see to it that the HCHR and his staff use this instrument to pursue a rigorous policy of drawing attention to and combatting human rights violations.

The last few years, both the Secretary General of the UN and the HCHR have held periodic meetings with rapporteurs and the chairpersons of working groups charged with implementing 'charter-based' procedures. The Advisory Committee has noted these initiatives with approval. The report of the first meeting with the HCHR[4], and indeed the subsequent reports of similar meetings contain a series of constructive suggestions to promote the effectiveness of these mechanisms and procedures, amongst other things with regard to the exchange of information, adequate budgetary facilities and staff training and local support by UN agencies in the case of on-the-spot inquiries. The Advisory Committee would particularly like to call attention to a recommendation concerning the role of the Commission on Human Rights, to which the rapporteurs and working groups report. In general, due to pressure of work and the late publication of many reports, the Commission tends to pay too little attention to the substance of these reports, which is regrettable. As a rule, attention is focused on political decision-making through resolutions. The Advisory Committee therefore recommends that special meetings (not necessarily in plenary session) be convened regularly, rather than on the personal initiative of the rapporteurs and working groups, on an ad hoc basis, either within the regular Commission framework or on its fringes, at which closer attention can be given to substantive matters. The present practice does not exploit to the full the work that has been done, offers rapporteurs and working groups too little feedback, and insufficiently reflects the Commission's responsibility for policy in this area.

The Advisory Committee noted above that very many procedures focus on countries and themes. These procedures, it must be stressed, are a vital and dynamic component of the human rights programme. For this very reason they need regular scrutiny and assessment. In this context the Advisory Committee wonders, for instance, whether certain mandates that have been extended on numerous occasions, should be further prolonged. This applies, for example, to the mandate established in 1987 concerning the use of mercenaries as a means of exercising peoples' right of self-determination. Its relevance was much greater some ten years ago than it is today. The Commission on Human Rights will moreover have to make a clearer distinction between the mandates that focus on human rights violations and that therefore fall within its purview, and study mandates that fall within the field of the Sub-Commission. Some years ago, for instance, a mandate issued to the Commission concerning the right to property (which has since been terminated) should preferably have been given to the Sub-Commission. More generally, the Advisory Committee notes in this context that many of the points of criticism expressed in advisory report no. 20 concerning the way in which studies are dealt with applies equally to studies carried out within the framework of the Commission[5].

Within the system of 'charter-based' procedures, the 1503 procedure occupies something of a special place. Since the value of this mechanism has increasingly been the subject of debate in recent years, the Advisory Committee has once again briefly considered the advantages and disadvantages of this procedure within the scope of this advisory report. When the confidential procedure was established in 1970, on the basis of resolution 1503 (XLVIII), it was a *rara avis*; supervisory and complaint procedures scarcely existed at that time in the UN. It was a period

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[4] See UN Document E/CN.4/1995/5.

[5] See advisory report no. 20, notably sections 2.3, 3.3 and chapter 4.

when hopes ran high. Since then, however, many procedures have been set up. 'Charter-based' and treaty-based procedures are on the whole more focused and effective than the 1503 procedure, and moreover function under public scrutiny. As a result, the 1503 procedure took on a kind of residual function, or safety-net role. Since this procedure entails activities at the level both of the Sub-Commission and the Commission on Human Rights, the Advisory Committee devoted some attention to the 1503 procedure in its report on the role of the Sub-Commission (advisory report no. 20). For the sake of completeness it would refer in this context to its earlier comments on this procedure.[6] It will be clear from these remarks that the Advisory Committee believes the procedure in some cases to play a useful, primarily political pressure role. On the other hand there are doubts -shared by the Advisory Committee- about the working method and effectiveness of this procedure. A major cause for concern is the fact that this procedure, originally geared to individual complaints, appears to be unable to cope with, i.e. to give serious attention to the huge quantity of complaints that have been submitted. Working together with reputable NGOs which continue to find it worthwhile to feed this procedure with information on systematic human rights violations, the Commission on Human Rights should take the initiative to seek ways of improving working methods without undermining the notions that caused the procedure to be set up in the first place. In this context one might for example consider making parts of the procedure public, or to increase complainants' scope for influencing the process at any given moment.

The Advisory Committee concludes this chapter by pointing out once again that it regards the 'charter-based' procedures and mechanisms as a vital and dynamic component of the UN human rights programme. To this end it is essential that -as was stated in earlier advisory reports[7]- the Centre for Human Rights is equipped so as to enable it to function properly. The Advisory Committee notes that it is not entirely clear from a recent report by the Secretary General of the UN on the restructuring of the Centre for Human Rights (A/C.5/51/71) that the part of the secretariat entrusted with the important task of supporting the work of the special rapporteurs and working groups will receive sufficient resources, in the form of funding and manpower, to enable it to carry out its work effectively (see also chapter 5).

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[6] See advisory report no. 18: 'Economic, Social and Cultural Human Rights', page 14/15.

[7] See for instance advisory report no. 17: 'World Conference on Human Rights'.

## Chapter 5. Developments since 'Vienna'

The cessation of tension between East and West, and the Second World Conference on Human Rights, held in Vienna in 1993, have created a new climate for institutional developments and innovations in the field of human rights, as well as in fields relevant to human rights. The Advisory Committee notes in this context the establishment of international criminal tribunals for the former Yugoslavia and Rwanda, and moves to establish a permanent international criminal court. An increasing focus on human rights is also evident in peace-keeping operations and in the establishment, referred to earlier, of human rights offices in a number of countries and monitors in the field. Within the scope of this advisory report the Advisory Committee will confine itself to noting these interesting trends and developments. A more thorough study would be required for a proper assessment of their functioning and effectiveness.

Another interesting development initiated by 'Vienna', and one which has been referred to above, was the creation by the UNGA, in December 1993, of a High Commissioner for Human Rights. Although the genesis over the years of a multiplicity of 'charter-based' and treaty-based procedures has made the need for such a functionary less evident than in the past, the HCHR has a significant role to play, notably in three areas: focusing greater attention on human rights, coordinating the UN human rights programme, and having the competence to take independent action in the case of grave violations of human rights.[8] It seems too early to be able to establish with any accuracy whether, and if so to what extent, the HCHR has succeeded in exploiting his role to the full. He has established diplomatic contacts with many governments, but appears to have adopted a somewhat cautious stance. In some cases, these contacts could be used by the governments concerned to avoid more effective inquiries by other UN bodies. In a few cases the HCHR has taken initiatives in response to large-scale and grave human rights violations, such as in Rwanda and Burundi.

In this context it must always be remembered that the HCHR took up his duties under circumstances which were far from optimal. His political weight would have been greater if he had been based at the UN's political centre, i.e. the New York Headquarters, close to the Secretary General. A number of organizations had hoped that this would be the case, including Amnesty International[9] and the Advisory Committee[10]. However, the UNGA decided instead to make him head of the Centre for Human Rights and to base him in Geneva, thus emphasizing his administrative responsibilities rather than his political function. At the same time this decision places the HCHR in a difficult position as regards his relationship with the Assistant Secretary General for Human Rights, who headed the Centre for Human Rights up to the moment of the former's appointment. This created a situation that, certainly during the initial stage, made effective leadership of the Centre very difficult. If one also takes into consideration the fact that the UN budgetary authorities were only prepared to equip the HCHR with a small staff, it is legitimate to question whether the political will initially existed among UN member states to make

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[8] See Van Genugten/Castermans-Holleman, *Twee jaar Hoge Commissaris voor de Rechten van de Mens, een Tussentijdse Balans*, in NJCM bulletin, Vol. 1996, pp. 656-675, particularly p. 659.

[9] See Peter R. Baehr, Human Rights Organizations and the UN: a Tale of Two Worlds, in Dimitris Bourantonis and J. Wiener (eds): The United Nations in the New World: The World Organization at Fifty, Houndmills, Basingstoke, Hampshire: Macmillan, 1995, pp. 170-189, particularly pages 181-183.

[10] See inter alia advisory report no. 17: 'World Conference on Human Rights'.

the HCHR a truly effective instrument for the promotion and protection of human rights. In the mean time, a greater degree of clarity appears to have been established with regard to certain points. Following an operation geared to restructuring the Centre for Human Rights, the HCHR's office and the Centre for Human Rights have now been fused into a formal entity. Extra staff have been appointed - albeit on a modest scale. New sections are also being set up. The Advisory Committee believes that the important thing to avoid here is the fragmentation of activities. Given the importance of the procedures outlined above, it is crucial that whatever shape a reorganization takes, it contributes to raising standards and improving coordination and communication. An essential condition in this respect is that UN member states ensure that the system has sufficient financial and personnel resources to function satisfactorily. Acting on the assumption that, for the present, both the HCHR and the reorganized Centre for Human Rights deserve to be given the benefit of the doubt, the Netherlands Government should continue to make active efforts to bring about improvements to the system. To do so it will need not only to seek actively for new ways itself, but also to provide political and material support where necessary to initiatives by other UN member states.

## Chapter 6. Summary and recommendations

In September 1995, the Minister for Foreign Affairs requested the Advisory Committee on Human Rights and Foreign Policy to advise him on the functioning of the UN human rights system and the implementation of human rights at international level. On 19 February 1996 it published an advisory report on the role of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (advisory report no. 20). In its present advisory report, the Advisory Committee focuses on the reporting procedures under human rights treaties and on the scope for rationalization and mutual harmonization of these procedures within the framework of monitoring compliance with various treaty-based obligations in the field of human rights.

The Advisory Committee considers the qualitative and quantitative developments that have taken place in this field since the publication in 1988 of its advisory report no. 7: 'Human rights conventions under UN supervision'. Against the history of the development of a system monitoring compliance with norms in the field of human rights, it goes on to outline certain problems undermining the effectiveness of reporting procedures, complaint procedures and research procedures. It also pays attention to certain aspects of supervisory procedures and mechanisms set up by the Commission on Human Rights on the basis of the UN Charter. It concludes by sketching certain developments relevant to this advisory report that have taken place since the Second World Conference on Human Rights.

UN supervisory procedures came into being through a series of conventions, each with its own monitoring system, and through decision-making by the UN Commission on Human Rights, which created a large number of 'charter-based' organs. These procedures have a complementary character. The total complex of supervisory procedures is extremely complicated and difficult to survey. In a sense, it is a very healthy system, but it does require a great deal of effort on the part of the UN if it is to function effectively as a whole. To ensure that the system of supervisory procedures functions effectively in future, the Advisory Committee makes the following recommendations:

General

1. The Advisory Committee wishes to stress that it regards the UN supervisory mechanisms as an important, forceful and dynamic component of the system of global human rights protection. All proposals for improvements must therefore be regarded with this in mind.

2. The various treaty-based procedures referred to more specifically below are complementary. If they are to be effective, at least three conditions must be met. Firstly, the committed cooperation of the states parties which have undertaken certain obligations by virtue of treaties, but which not infrequently renege on their responsibilities. Secondly, expertise, commitment and independence on the part of the members of the treaty bodies. Thirdly, a well-equipped, dedicated and expert Centre for Human Rights. The Advisory Committee notes with concern that these three conditions are far from being met. It urges the (Netherlands) Government to do everything in its power to help achieve them, where possible in cooperation with like-minded countries.

Reporting procedures

3. The treaty bodies must take steps to guarantee thorough and punctual consideration of country reports. The Advisory Committee urges treaty bodies to stick more rigidly to their supervision timetables. It moreover recommends that in future treaty bodies set their timetables themselves well in advance (for instance a year in advance), irrespective of whether states parties are ready and able to submit their reports on time.

4. Support should be given to the proposals by various treaty bodies to speed up consideration of those reports that have been submitted, but not yet examined. The Advisory Committee urges the Netherlands Government, where possible with like-minded partners, to make efforts to ensure that the necessary funding and facilities are allocated.

5. In order to raise the quality of the dialogue between government representatives and treaty bodies, the Advisory Committee believes that the treaty bodies should adopt a system whereby country reports are dealt with in three stages: an initial round in which the most important issues were dealt with, and which would allow the state party the opportunity to reflect and hold internal consultations; a second round, in which to continue and complete the dialogue and, finally, a third round, at which the state party would not be present, and during which the treaty body would finalize its concluding observations.

6. The Advisory Committee supports the trend whereby, prior to examination of country reports, treaty bodies organize sessions attended by NGOs in order that they may share their expertise with country rapporteurs and other members of treaty bodies. It favours the general adoption of this practice. In general it recommends the active involvement of national and international NGOs in the exchange of information preceding committee meetings.

7. Most human rights treaties do not provide for inquiries involving visits to the territories of states parties. Providing that these are sanctioned by the state party concerned, such on-the-spot inquiries can generally be said to have an important preventive effect. The Advisory Committee favours the continuation and expansion of this option, or the creation of such an option where it does not yet exist. It is aware that on-the-spot inquiries on the territories of states parties can only take place in special cases, due to budgetary restrictions.

8. The Advisory Committee endorses the need for treaty bodies to arrive at an unequivocal policy on substantial issues. This could be achieved by switching in the long term, to a single, uniform supervisory mechanism, or by adopting a 'joint' approach whereby the various treaty bodies dealt with country reports at the same time. An interim solution would be to combine the reports required by the various treaties into a single, comprehensive report. In the short term, a realistic solution would be to clarify and strengthen the coordinating tasks of the HCHR and the Centre for Human Rights.

9. The national component of the reporting procedures receives, on the whole, too little attention, despite the fact that it is at least as important as the international component, if not more so. This means that the Netherlands, like other countries, would have to have coordination meetings with all the relevant ministries well in advance of the date on which a report had to be submitted, and would have to draw up a timetable for the preparation and submission of the report. Strict compliance with the timetable is crucial. Since compliance with reporting obligations is the responsibility of states parties, the Advisory Committee believes that the role of NGOs in the preparation of reports should in principle be confined to the provision of information.

10. The Advisory Committee considers it very important that completed reports become the subject of national debate in social and academic frameworks. However, this depends on NGOs and others being given access to the texts of government reports and being informed well in advance of the dates on which treaty bodies are to consider reports.

11. The Advisory Committee believes that Parliament should also obtain a better insight into the way in which the Netherlands complies with its treaty obligations. The Advisory Committee therefore recommends that the relevant reports are sent to the Upper and Lower Houses of Parliament at the same time they are submitted to the treaty bodies, and that after the reports have been dealt with by the treaty bodies, the government reports to the Upper and Lower Houses on how recommendations are being implemented. To promote debate on this issue, the 'concluding observations' should be made available to Parliament.

Complaint procedures

12. With regard to the individual right of complaint, the Advisory Committee recalls that in a number of instances the Netherlands played an important initiating role within the UN in this respect. It urges once again that an individual complaint procedure be attached to the ICESCR and other conventions that do not provide for such a procedure, such as the CEDAW. It trusts that the Government will make every possible effort to support the proposal currently under consideration by the UN Commission on the Status of Women, and to foster and promote a positive decision.

Inquiry procedures

13. The Advisory Committee attaches great importance to the inquiry procedure, which has as yet only been laid down in the CAT. Although the application of this procedure requires an approach that differs from treaty bodies' other, traditional duties, the Advisory Committee believes that similar inquiry procedures should be provided for by other human rights conventions.

'Charter-based' procedures and mechanisms

14. The Advisory Committee stresses that visits to the territories of states parties by country and thematic rapporteurs constitute an important and effective method of monitoring compliance with human rights. This also applies to the human rights offices and field monitors established by the HCHR; providing they are properly equipped, trained and instructed, these facilities can form a worthwhile supplement to existing mechanisms for the protection of human rights. The HCHR has rightly taken on a responsibility in this respect, which the Advisory Committee feels deserves the political and material support of the Netherlands Government.

15. The Advisory Committee notes with approval the periodic meetings between both the Secretary General of the UN and the HCHR with rapporteurs and the chairpersons of working groups charged with implementing 'charter-based' procedures. The constructive suggestions that have been made to promote the effectiveness of these mechanisms and procedures deserve support. This applies particularly to a recommendation concerning the way in which the Commission on Human Rights should take note of the reports of these rapporteurs and working groups. The Advisory Committee therefore recommends that special meetings be convened regularly, rather than on the personal initiative of the rapporteurs and working groups, on an ad hoc basis, either within the regular Commission framework or on its fringes, at which closer attention can be given to substantive matters.

16. The numerous procedures geared to countries and themes require regular scrutiny and assessment. The Commission on Human Rights will moreover have to make a clearer distinction between the mandates that focus on human rights violations and that therefore fall within its purview, and study mandates that instead fall within the field of the Sub-Commission.

17. The Advisory Committee believes that in some cases the 1503 procedure plays a useful, primarily political pressure role. On the other hand it has doubts about the working method and effectiveness of this procedure. The Commission on Human Rights, together with reputable NGOs, should take the initiative to seek ways of improving working methods under this procedure without undermining the notions that caused it to be set up in the first place. In this context one might for example consider making parts of the procedure public, or to increase complainants' scope for influencing the process at any given moment.

Developments since 'Vienna'

18. At present new sections are being set up within the Centre for Human Rights as part of a general restructuring. The Advisory Committee believes that the important thing to avoid here is the fragmentation of activities. It is crucial that whatever shape a reorganization takes, it contributes to raising standards and improving coordination and communication. An essential condition in this respect is that UN member states ensure that the system has sufficient financial resources and manpower to function satisfactorily. Acting on the assumption that, for the present, both the HCHR and the reorganized Centre for Human Rights deserve to be given the benefit of the doubt, the Advisory Committee believes that the Netherlands government should continue to make active efforts to bring about improvements to the system. To do so it will need not only to seek actively for new ways itself, but also to provide political and material support where necessary to initiatives by other UN member states.

Annex I

**Members of the Advisory Committee on Human Rights and Foreign Policy**

Prof P.R. Baehr

Dr C.E. von Benda-Beckmann - Droogleever Fortuijn (vice-chair)

Prof T.C. van Boven

Prof C.P.M. Cleiren

Mr T. Etty

Prof C. Flinterman (chairman)

Prof W.J.M. van Genugten

Ms C. Hak

Mr R. Herrmann (up to 19 January 1996)

Mr A. Hordijk

Mr S.H. Kamminga

Dr K. Koch

Ms B.A.W. Korvinus

Mr F. Kuitenbrouwer

Mr A.J. van der Meer

Mr C.F. Stork

Mr J. van der Valk

Advisory members:

Mr Th.R.G. van Banning

Mr K. de Vey Mestdagh

Secretary:

Mr T.D.J. Oostenbrink

As of December 1996.

Annex II

**Request for advice**

**To the Chair of the Advisory Committee
on Human Rights and Foreign Policy
PO Box 20061
2500 EB The Hague**

**Date: 6 September 1995**

**Re: Request for advice on the UN human rights system - implementation at the international level**

**In accordance with section 3, subsection 1 of the Advisory Committee on Human Rights and Foreign Policy (Establishment) Act of 20 June 1984, I would request you to submit an advisory report on the following.**

1. **It has recently become apparent that the requirement that experts appointed to the Sub-Commission or treaty bodies be independent is increasingly neglected. Political appointments are a matter of course: a state of affairs which is now openly acknowledged. Ways must be sought, within the existing United Nations (UN) framework, of rectifying this situation. Failure to safeguard this independence -at the very least in a purely formal sense- will not only undermine the authority of the relevant bodies, but have a detrimental effect on the entire corpus of UN human rights instruments. It is essential to prevent legal structures becoming politicised.**

   **I should like to ask the Advisory Committee to provide recommendations on this subject. Please note that my Ministry attaches importance to the development of a code of appointment, which should place considerable emphasis on the incompatibility of various offices (those of, for instance, ambassadors, ministers or civil servants) with UN posts. Article 57, paragraph 2 of the Constitution of the Netherlands provides an example of such an approach: 'A member of the States General may not be a Minister, State Secretary, Member of the Council of State, member of the Netherlands Court of Audit, member of the Supreme Court or Procurator General or Advocate General at the Supreme Court.'**

2. **The streamlining of reporting procedures under the various UN human rights conventions has been on the human rights agenda of the UN for some time now. Consultations on this theme have led to the drafting, by states parties, of a 'core document' to be used for all reports. Despite this simplification and reduction of the workload, the burden involved in reporting still weighs heavily on both states parties and supervisory bodies. The Advisory Committee is requested to look at possible ways of simplifying and improving the reporting system.**

3. **When looking at the streamlining of reporting procedures it is impossible not to wonder at**

the failure of the various supervisory organs to adopt a uniform policy. This can be illustrated by the Human Rights Committee's willingness to pronounce on the question of whether corporal punishment can be considered as a 'lawful sanction', whereas the Committee against Torture has so far refused to do so, despite repeated requests to this effect from the government of the Netherlands. Stances like these will create opacity and confusion in terms of human rights standards - a situation which must be avoided. The Advisory Committee is requested to suggest ways in which such undesirable developments might be curbed.

4. The Advisory Committee is asked to map out the role which the Sub-Commission plays or ought to play in relation to the Commission. In doing so it should look at the viability of the initiatives set up by the Sub-Commission. During the Sub-Commission's last session it once again became increasingly clear how greatly its work now deviates from its original mandate. I look forward to seeing your advisory report.

[signature]

The Minister for Foreign Affairs

Annex III

**List of advisory reports published by the Advisory Committee**

| | |
|---|---|
| No. 1 | 'On an equal footing', on strengthening the role of officials of the Ministry of Foreign Affairs in the promotion and protection of human rights (1983) |
| No. 2 | 'Supporting human rights; human rights in Suriname' (1984) |
| No. 3 | 'Crossing borders; the right to leave a country and the right to return' (1986) |
| No. 4 | 'Freedom of information' (1986) |
| No. 5 | 'Development cooperation and human rights' (1987) |
| No. 6 | 'Threatened women and refugee status' (1987) |
| No. 7 | 'Human rights conventions under UN supervision (1988) |
| No. 8 | 'Towards a semi-permanent European Commission on Human Rights' (1989) |
| No. 9 | 'The international mechanism for supervising observance of the European Convention on Human Rights and Fundamental Freedoms' (1990) |
| No. 10 | 'Harmonization of asylum law in Western Europe' (1990) |
| No. 11 | 'Democracy and human rights in Eastern Europe' (1990) |
| No. 12 | 'Human rights and international economic relations' (1991) |
| No. 13 | 'The human dimension of the CSCE' (1991) |
| No. 14 | 'The traffic in persons' (1992) |
| No. 15 | 'The use of force for humanitarian purposes' (1992) |
| No. 16 | 'Indigenous peoples' (1993) |
| No. 17 | 'World Conference on Human Rights' (1993) |
| No. 18 | 'Economic, social and cultural human rights' (1994) |
| No. 19 | 'Collective rights' (1995) |
| No. 20 | 'The role of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities' (1996) |
| No. 21 | 'The European Union and Human Rights' (1996) |

No. 22 'UN Supervision of Human Rights' (1996)

No. 23 'National Minorities, in particular in Central and Eastern Europe' (1996, in translation)

Also available: Advisory Committee's evaluation report 1988-1993 (1993)
Advisory letter 'CSCE mechanisms' (1994)
Advisory letter 'Social Summit' (1995)
Advisory letter 'Indigenous Peoples' (1995)
Advisory letter 'Habitat II' (1996)

Annex IV

## Statistical data

### States Parties and number of Overdue Reports

| International Instruments | 21 October 1996 | | June 1988 | |
|---|---|---|---|---|
| | States Parties | Overdue Reports | States Parties | Overdue Reports |
| International Covenant on Economic, Social and Cultural Rights | 135 | 124 | 91 | 169 |
| International Covenant on Civil and Political Rights | 135 | 126 | 87 | 54 |
| International Convention on the Elimination of All Forms of Racial Discrimination | 148 | 415 | 124 | 170 |
| Convention on the Elimination of All Forms of Discrimination against Women | 154 | 197 | 94 | 57 |
| Convention against Torture and Other Cruel, Inhuman of Degrading Treatment of Punishment | 99 | 82 | 37 | — |
| Convention on the Rights of the Child | 187 | 73 | — | — |
| Total | 858 | 1017 | 433 | 450 |

### Individual complaint procedures and number of views

| Optional Protocols | States Parties | | Final Views | Admissable | Inadmissable |
|---|---|---|---|---|---|
| | 1988 | 1996 | | | |
| First Optional Protocol to the International Covenant on Civil and Political Rights | 43 | 89 | 418[11] | 207 | 211 |
| Second Optional Protocol to the International Covenant on Civil and Political Rights | - | 29 | - | - | - |
| Optional Protocol to the Convention on the Elimination of All Forms of Racial Discrimination | 14 | 23 | 5 | 4 | 1 |
| Optional Protocol to Convention against Torture and Other Cruel, Inhuman of Degrading Treatment of Punishment | 25 | 37 | 13[12] | 4 | 9 |

[11] As of April 1996.

[12] As of May 1995.

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